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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,455	08/27/2003	Paul LaStayo	12218.2217 (12218.2200)	7131

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EXAMINER

RICHMAN, GLENN E

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 08/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/650,455

Applicant(s)

LASTAYO ET AL. C

Examiner

Glenn Richman

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) 25-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 and 33-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/24/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

Applicant's election without traverse of Group I, claims 1-24, 33-58 in the reply filed on 5/23/05 is acknowledged.

Claims 25-32 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 5/23/05.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-24, 33-58 are rejected under 35 U.S.C. 102(e) as being anticipated by Dean.

Dean disclose a frame (fig. 3), at least one support attached to said frame for supporting a user's body (fig. 3), at least one engagement member attached to said frame for engaging at least one part of the user's body (fig. 3), said engagement member being moveable in opposite directions (col. 4, lines 50-58); means for supplying power to said engagement member such that said engagement member is capable of exerting a force in a first direction at a predetermined speed (abstract); means for

detecting a change in said predetermined speed after the user supplies a force to said engagement member in a direction opposite said first direction (abstract); and means for adjusting output of the power supply means to maintain said predetermined speed (claim 3).

As for claims 2-16, Dean further disclose said at least one support comprises a seat (fig. 3), said seat comprises a recumbent seat (), said recumbent seat is adjustable (fig. 3), a support structure for the recumbent seat wherein the recumbent seat is attached to the support structure and the support structure is attached to the frame (fig. 3), said recumbent seat is positioned at an angle of about 15 degrees relative to a furthestmost position from the user of said at least one engagement means (fig. 3), said at least one engagement member comprises a bar press or a crossbar (fig. 3), comprises at least one of a pedal and a hand grip (fig. 3), at least one strap for securing a user's foot to said pedal and a user's hand to said hand grip (25), a drive mechanism powered by said power supply means, said drive mechanism being attached to said at least one engagement member to move said at least one engagement member in said first direction (col. 8, lines 35-58), said power supply means comprises a motor (col. 8, lines 35-58), a safety element which prevents full extension of at least one of a user's joints during operation of the apparatus (col. 6, lines 54 – et seq.).

Dean further disclose said at least one support comprises a recumbent seat, said at least one drive mechanism comprises a turn crank (fig. 3), said engagement member includes pedals for engaging a user's feet (fig. 3), and said safety element comprises a bar member positioned in front of said recumbent seat for maintaining a user's knees in

a bent position while operating the apparatus said frame comprises a plurality of tubular shaped members (fig. 3), means for detecting a change in said predetermined speed comprises a sensor (col. 9, lines 1-10), said means for adjusting output of said power supply means to maintain said predetermined speed comprises a central processing unit which sends signals to a motor controller (14), display means for displaying at least one of a deceleration power, a time elapsed, a user's heart rate, and at least one of a number of revolutions per minute or reciprocating per minute (claim 2), a control panel for starting the apparatus, stopping the apparatus, and setting at least one of a timer, a speed, a performance goal, and a heart rate goal (claim 5).


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn Richman whose telephone number is 571-272-4981. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Glenn Richman  
Primary Examiner  
Art Unit 3764